

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

WESLEY J. DELANEY,

Petitioner,

Case Number: 07-13441

v.

PAUL D. BORMAN
UNITED STATES DISTRICT JUDGE

JEFFREY WOODS,

Respondent.

**ORDER GRANTING PETITIONER'S APPLICATION
TO PROCEED *IN FORMA PAUPERIS* ON APPEAL BUT
DECLINING TO ISSUE A CERTIFICATE OF APPEALABILITY**

Petitioner has appealed the Court's Order and Judgment denying his habeas corpus petition. The Court must treat the notice of appeal as an application for a certificate of appealability. *Slack v. McDaniel*, 529 U.S. 473, 483 (2000).

"[A] prisoner seeking postconviction relief under 28 U.S.C. § 2254 has no automatic right to appeal a district court's denial or dismissal of the petition. Instead, [the] petitioner must first seek and obtain a [certificate of appealability.]" *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). A certificate of appealability may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). "Where a district court has rejected the constitutional claims on the merits, the showing required to satisfy § 2253(c) is straightforward: The petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. at 484.

The habeas petition asserts three claims regarding Petitioner's sentence. The Court rejected the claims because two of them allege state law issues, which are not cognizable on habeas review, and the remaining claim fails to establish a due process violation under *Townsend v. Burke*, 334 U.S. 736 (1948). Reasonable jurists would not disagree with the Court's resolution of Petitioner's claims, and the issues do not warrant encouragement to proceed further. Accordingly, the Court DECLINES to issue a certificate of appealability. Petitioner nevertheless may pursue his appeal *in forma pauperis*, because an appeal could be taken in good faith. 28 U.S.C. § 1915(a)(3); Fed. R. App. P. 24(a)(4)(B). His application to proceed without prepayment of the appellate filing fee [Dkt. # 17, June 8, 2009] is GRANTED.

s/Paul D. Borman

PAUL D. BORMAN

UNITED STATES DISTRICT JUDGE

Dated: July 7, 2009

CERTIFICATE OF SERVICE

Copies of this Order were served on the attorneys of record by electronic means or U.S. Mail on July 7, 2009.

s/Denise Goodine

Case Manager